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# A TREATISE

ON THE

# PRINCIPLES

OF

# THE USURY LAWS;

WITH DISQUISITIONS ON THE

ARGUMENTS ADDUCED AGAINST THEM

BY MR. BENTHAM AND OTHER WRITERS,

AND A

*REVIEW of the AUTHORITIES in THEIR FAVOR.*

BY ROBERT MAUGHAM.

"Borrowing dulls the edge of husbandry."—*Shakspeare.*

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ON THE

# LAWS AGAINST USURY.

## SECT. I.

Introduction—Extremes in Legislation—Is the present time the best adapted of all others to repeal these Laws?

It is curious to observe, in the progress of human opinions, when once they begin to change, how readily mankind pass from one extreme to another. This is a truth, exemplified in nothing more strikingly than in the general progress of legislation. In former ages, the laws were probably too severe,—they are now thought to be too much relaxed. In the criminal code, the punishment for the most atrocious crimes was anciently commuted for a fine: subsequently death was inflicted for many petty offences, and now some of our reformers would abolish the punishment of death altogether. There appears to be a re-action in all popular sentiments. As our ancestors are supposed to have been wrong



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in one direction, we are determined to avoid a similar error; and, in order to do this the more effectually, we rush into the opposite extreme. We seem, indeed, in the present age, to be doomed to the consequences of two sorts of legislative architects: the one, with extraordinary activity, is incessantly engaged in framing new laws, and the other is not much less industrious in altering or repealing old laws. It fortunately happens that both parties are at work at the same time, or we should soon have no law whatever!

The history of Legislation, as it respects usury, is of the same kind as in those instances to which we have referred. At first it was a deadly sin to receive any sort of interest for the loan of money. Then it was permitted to an enormous extent. Afterwards it was reduced to a reasonable amount; and now we are called upon at once to sweep from the Statute Book every vestige of regulation and restraint.

Perhaps on this subject, as on so many others, the truth lies between the two extremes, and the safest and wisest is the middle course.

It is said that the present time is peculiarly favourable for the abolition of the Law, because the market rate of interest is below the legal rate. This might be true, supposing it perfectly clear that the repeal would be beneficial. But

the measure being, to say the least of it, exceedingly questionable, the reason is not a good one. As money can be obtained on good security below the maximum, there is no existing evil. Its opponents assert only, that it is attended by ill effects in times of pressure and difficulty. Surely, the natural course should be, to apply a remedy when there is disease, and not administer to a body politic, that is perfectly well, the dangerous physic of experimental legislation.

If the complaint be only a partial, and not a general one, is it not sufficient to apply a partial remedy? During war, the rate of interest, it is said, was too low. Money could not always be obtained, even on good security; but then it would surely be sufficient, when the exigency of the case thus really required it, to increase the rate during the season of distress. The question, at present, is not, however, one of peculiar emergency, or dependent upon extraordinary circumstances, but it is of a general and permanent character. It is admitted, that there is no immediate occasion for the alteration of the Law. The market price is below the legal price. It is a question of universal policy, and ought not to be tried by the difficulties attendant upon such an unexampled state of affairs as existed during the late war. The principle, on which this branch of jurisprudence should, like all others,

proceed, is a principle of general benefit to the state. The Law is to be a general rule, not a case of exception. It may be wise, indeed, to provide against evils before they approach; but it must be clear that the provision is, *on the whole*, beneficial. It would be rather contrary to good policy to occasion, or even to incur, the hazard of occasioning, a large portion of actual mischief, lest, at a distant time, some degree of evil might possibly arise, but of which there was no kind of certainty.

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## SECT. II.

Principles and Reasons of the Laws—Encouragement of Industry—Stability of Property, and certainty of Value—The Evils of a general state of Borrowing and Lending.

The foundation of the Law against Usury, like that of every other Law, depends, of course, either on the good it produces or the evil it prevents.* The object of all legislation is to benefit the community at large, and to restrain whatever

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* Mr. Justice Blackstone observes, that "the Mosaical precept was clearly a political, and not a moral precept. It only prohibited the Jews from taking usury from their brethren the Jews; but, in express words, permitted them to take it of a stranger."—(Deut. 23. 20.)

is injurious to it. Industry is beneficial, and idleness injurious. Productive labour is the great source of national wealth. It is the policy of these Laws, therefore, to *prevent the idle from reaping too large a portion of the fruits of industry*. A large profit should not be permitted without some adequate portion of labour.

A moderate rate of interest ought certainly to be allowed, not only because we cannot expect money will be lent to a stranger without some return, but because it is in the majority of instances just and proper. The money has been acquired by industry. The loan enables the borrower to acquire a profit. It is therefore reasonable that the lender should receive a remuneration during the time he parts from it.

*A fixed rate of interest secures property from*

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It may be remarked, however, that, if this precept can strictly be called political, its *policy* depended on the actual *benefit* it produced to the Jewish people; and, if the observance of this law in that nation was beneficial, it would be so also in other nations. The permission to take usury of strangers appears sufficiently founded in reason. In the hands of their own brethren, the money either remained in specie, or was exchanged for articles useful to the community. The common good was the object. If the individual suffered, the community gained. But it was not so in the hands of strangers. It was in hazard. The general stock was diminished; and, according to the uncertainty of its return, might fairly be the estimate of the sum demanded for its use.

*fluctuation and uncertainty in value.* Without this, no one could depend on any prospective calculations or future provision, either for himself, his family, or connexions. All contracts, to be executed at a distant time, would be entirely speculative. There would be no common standard by which to estimate the value of any future property, contingent or reversionary. There would be at least the same instability that there now is in the price of the government stocks; and, in all probability, the fluctuation would be still greater; because, in private transactions, each individual would be guided by his own opinion, and be influenced by his own interest; and, though there might be in large transactions, and amongst the principal bankers and merchants, something like a market price for money, yet every lender would still be able to treat the cases that came before him, as differing from the general rule, and forming the exceptions.

*Borrowing, in general, is decidedly an evil.* There are, indeed, cases of exception. There are some occasions in which the rule should be relaxed; but, in the majority of instances, borrowing should be checked, and the laws which check it are useful and necessary.

That "*borrowing dulls the edge of husbandry,*" is an obvious truism. He who can borrow with ease will not husband his resources; and, in pro-

portion to the facility of borrowing, will be the diminution of cautious savings and industrious exertions. The journeyman and the young tradesman, instead of frugality and labour, by which alone, at present, he can advance himself, are, according to the new system, to depend on the favours of money-lenders; and, instead of commencing or proceeding in their career with a small capital unincumbered, and on the credit gained by good conduct, they are invited to start with a mill-stone of usury around their neck. A speedy race they will make of it!

*It is not wise to tempt persons to lend money on insecure contracts.* The permission to receive heavy interest will not secure the principal. It is injurious to both parties,—inviting the one to speculate with property not his own, and the other to calculate on gains which he has never earned, and frequently never receives.

*The facility to borrow diminishes prudence.* This valuable habit is never very eminent amongst mankind, even under every inducement; and it would be still farther impaired, and brought beneath its lowest standard, by increasing the opportunities to borrow. Those laws, which favour frugality and industry, favour also national *morality*, for they who are employed in useful labour, are not only the most important members of society, by increasing its wealth, but they are also the most moral.

General plenty and cheapness are peculiarly desirable; but the abundance which may add to the comforts of one class may, in the same proportion, diminish those of another; as cheapness in London may produce poverty at Manchester.

It is not at all surprising that some eminent mercantile men should favour unlimited usance. Their extensive credit and influence enables them at all times to obtain money at a moderate rate. *They* need not fear extortion. They have abundance of good security to offer the lender. But the evil will fall on the small trader, and those who have not the first-rate security to deposit. Thus, it will naturally happen that they who can least afford to pay a high rate of interest, will be obliged to pay it. It is true that some of their profits are larger, in comparison, than those of the great merchant; but then they have to bear all the numerous expences incident to business, out of a limited return.*

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* The probable effect of a repeal of the law upon the great majority of traders and manufacturers in this country, is well pointed out in the valuable testimony of Mr. Rothschild. He says, "I think the operation of the Usury Laws, as bearing upon the value of money in England, of great importance to tradesmen. In this country it is different to those on the continent: a bill drawn upon such persons is seldom, if ever, seen; while in this country they abound, and are doubtless a

## SECT. IV.

Principles and Reasons, *continued.*—Difference in the Nature of Money and other Species of Property.

There are sufficient reasons why there should be a distinction in the law between the dealing in money, and in other species of property.

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great and necessary accommodation to that part of the community. Small manufacturers, likewise, derive many advantages from this kind of assistance, as many of them have friends or a confidential person in town, on whom they draw at short dates, against their goods sent to the London market. These bills become negociable at the legal rate of five per cent. discount, which enables such persons to carry on their concern, not only with more facility and advantage, but to a much greater extent. It is impossible for me to say positively what would be the consequence to these, and many others of a similar description, were the Usury Laws repealed; but I believe great advantage would, in many cases, be taken of the necessities of such persons, by the lender demanding, probably, two or three times the rate of interest from them on this security, as would be required in discounting the bills of first and second-rate houses: therefore, it appears to me, that *the less opulent should be protected in some way from being exposed to so great a reduction in their profits*, through the necessity of turning their capitals, by immediately discounting their drafts at an extravagant rate; those persons not having hitherto had much difficulty in discounting their bills at the legal rate of five per cent. discount."

They are essentially different in nature and intrinsic value. Money is not like any other commodity. Metal in the shape of *money is of no intrinsic value.* Its importance, necessity, or use, is merely relative and conventional. It is only a representative of wealth, just as paper money is valuable only as the substitute of coin.

*It is imperishable.* It occasions no expence to replace it, and scarcely any to preserve it. Houses, and every species of property, diminish in value by use, and require the continued application of industry and capital to preserve and renew them: therefore they are entitled to a higher rate, and, from various circumstances, that rate cannot be precisely fixed. If it could be fixed, and it were the interest of the community to fix it, it would be just to do so.

*Security is given for the return of the money, which is not the case in the loan of other property.* A less profit therefore should, in justice, be required, because the risk is obviously less. If I borrow a horse, I am to pay the hire of it. The lender has no pledge of other property to secure the return of the horse; but he is protected, so far as he can be protected, by the terror of the criminal code. The owner of a house, also, receives no direct security; but

then the hirer is subject to a stricter rule of law than other contractors; for, if he does not pay the rent when due, his property may be immediately seized; and, even if he remove it, it may be followed and taken possession of, and in five days sold: so that the law does, in truth, adapt itself to the necessity or utility of each particular class of cases; and the general practice; as well as the principles, of legislation, therefore, justify the adoption of such measures as may be expedient in pecuniary contracts.

The dealing in money partakes of the evils of monopoly. It is not a production common to mankind. They who hold it, if unrestrained by law, are enabled to dictate terms to those who want it. It is not, like other articles of property, capable, by industry, of increase. *Corn*, for instance, may be purchased or bartered for by any one, and will increase in proportion to the labour and cultivation bestowed. Here we observe the just reward of industry. We need not adopt the reasoning of Aristotle, that, "because money is naturally barren, it is preposterous to make it breed money."* It is enough to

* This passage, Blackstone observes, has been suspected to be spurious. But there is no improbability in Aristotle's having, in the age in which he lived, entertained such an opi-

show that it differs in nature and utility from every other commodity. But the law does not rest upon this intrinsic difference; it is grounded upon public utility and justice. Though money is in itself incapable of increase, it was produced by industry; but then these investments of surplus should not receive so high a reward as present and actual industry. It does not need it, and it is not wise to afford it.

Another difference between money and all other articles, consists in its being comparatively *immutable* in nature and extent. It is useless to make laws to fix the price of merchandize, because it varies indefinitely, both in quantity and quality. It is not so with respect to money. The aggregate quantity in Europe has not much differed for many ages, and the quality never varies. There is but little risk or speculation in dealing in it; in merchandize there is generally considerable hazard. The principle of encouraging industry also applies in favour of merchandize. Some acts of extortion may be tolerated for the sake of the general benefit; but the

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nion. Usury was held in public reprobation, and the form in which the objection is couched by Aristotle was in all probability the most popular argument against it. The opinion is also quoted in *Puffendorf*, p. 509, without any doubt of its authenticity.

impossibility of framing regulations that can be carried into any thing like general effect in a vast trading community, sufficiently accounts for the absence of restriction on the price of merchandize.

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## SECT. V.

Historical View of the Subject—The Restriction proportioned to the Progress and State of Society—Changes in Agricultural and Commercial Profits—Market Rate of Interest—Present Prices.

Independent of the policy of the law, founded upon the general *principles* of public utility, which have been stated, there are reasons, grounded in FACT, which are sufficiently conclusive in favour of a restriction of interest.

*The laws against usury have kept exact pace with the progress of society, and the general state of its affairs.* The rate of interest has been gradually diminished from age to age by legal enactments, according to the profits on commerce, and the uses for which money was required. When commerce was limited, and its gains considerable, the amount of usance was high. There was formerly greater danger than there is now of the loss of capital. The demand

for mercantile commodities was casual and limited: they are now comparatively certain, and aggregately extensive, though in particular departments subject to fluctuation; but even then the average profit amounts to nearly the same result.

It is worthy of notice that, until commerce became extensive, and formed an object of national concern, the laws against usury were chiefly founded upon the difference between the nature of money and other commodities, and upon the natural hostility which exists between the hoarders of money and those who are in need of it; aided by a common feeling, which preferred a generous, and even profuse expenditure, to the thrifty habits of parsimony. It appears that society at that time, in the very nature and necessities of its constitution, was impelled, for its own welfare, to originate and to encourage these sentiments. At that time the interests of mankind depended more upon the diffusion of the existing wealth than they do now. The necessaries, as well as luxuries of life, were not in the same abundance; and, especially at that peculiar era, property was in fewer hands, and held in comparatively larger proportions: it followed, consequently, that, if the few great possessors of wealth retained it unemployed, they did greater mischief than the same number of persons have now the power to

do: and, on the other hand, they who disseminated their revenues in acts of bounty and hospitality, were the greatest benefactors to mankind.

It is certainly in favour of the reasonableness and moderation of these restrictions, that they have followed at a humble distance the progressive state of agriculture and commerce. The law cannot be charged, as it sometimes, perhaps justly, has been, with an attempt to drive, or even to lead, either one way or the other, the natural or accidental operations of trade and manufactures. It has accompanied their footsteps, and been regulated in all its successive changes by their movements. The market-price has been the standard it has followed.

Before the specific provisions by statute, the laws relating to usury were entirely prohibitory, and confined to its punishment, either canonically as a sin or civilly as a crime. The effects of a usurer, after his death, according to the ancient law, belonged to the king. Inquisitions were held upon persons dying in this offence; and, if the fact was proved, the personal effects were seized, the heir was disinherited, and the land reverted to the feudal lord. Reformation and penitence, however, saved the culprit's property; and it was only when he *died* an usurer

that his effects could be confiscated. (Glan. lib. vii. 16.)

By the Statute of Merton, (20 Henry III. chap. 5,) usury was put under particular restraint in favour of minors. In the reign of Edward I. by the Statute de Judaismo, all usury was absolutely prohibited. There were three Acts also passed during the time of Henry VII. in which the term "usury" is applied to all loans upon interest, and prohibited under certain penalties.

Down to the middle of the sixteenth century, such was the state of the law of England on this subject.

In this early stage of our national commerce, in the 37th year of King Henry VIII. an Act was passed, by which interest was permitted at ten per cent. At that time both manufactures and trade were comparatively in their infancy, and the difficulties and hazard which accompanied their operations naturally enhanced the amount of profit, and we find that the legal rate of interest was correlative.

Though the taking of interest was entirely forbidden by the 5th and 6th of Edward VI. it was again legalized by the 13th of Elizabeth, and limited to ten per cent.

In the year 1624, (just two hundred years

ago,) the interest was reduced to eight per cent. by the statute of 21 James I.; and this reduction, being about eighty years after the Act of Henry VIII. appears to have corresponded with the progressive prices of commercial and landed property.

We then pass to the 12th of Charles II. in the year 1661. In the intermediate period, of thirty-seven years only, Great Britain had acquired several colonial possessions, and her commercial capital had increased with rapid steps. The rate of profit had naturally fallen, and usance was limited to six per cent.

In the year 1714, after the lapse of fifty-three years, when capital was still further extended, and profits still further reduced, the legal rate of interest was fixed, by the 12th of Anne, at five per cent., the amount at which it has ever since remained.

It is a most important fact, which should constantly be borne in recollection, in considering the expediency of a repeal of the present law, that at this period, and for a considerable time past, the profits of the agriculture, manufacture, and trade, of this country, will not allow of the payment of more than five per cent. for the use or extension of capital. Indeed, no farmer, manufacturer, or merchant, generally speaking, can afford to pay *even so much* as five per

cent. out of his profits. The average profit on capital does not, in fact, exceed eight or ten per cent.; and, though it may be the interest of the community, that articles of use or necessity should be cheap, it can never be its *permanent* interest that they should be *so* cheap, that the farmer, the manufacturer, and trader, should be ruined, instead of being enriched. The law, therefore, without any violation of justice, may surely restrain those measures which, if permitted, would thus evidently be injurious to the major part of these essential classes of the country

In an extensive community, it may not be a fit office of the legislature to enact provisions for the regulation or restraint of a few spendthrifts; but it is at all times just and important to check, if we cannot wholly prevent, a system which tends to injure the productive classes; a system which, whilst it pretends to serve and facilitate the views of those classes, in effect, tempts them with the fairy prospect of riches, but, "as they follow, flies," and ultimately allures them to their ruin.

An increase of farming, manufacturing, and mercantile capital, is no doubt beneficial to the state. Those who can spare money so to employ it, increase the quantity of useful productions, and their profit is a just return for their industry and the hazard of their capital. But

this supposes the capitalist to employ his money in a direct, and not in an indirect manner. It supposes that he fairly embarks his property, and "stands the hazard of the die;" that he does not place "a middle man" in the gap to fight the battle, whilst he securely reaps the victory. It is obvious, indeed, that they who diminish the profits of agriculture, trade, and manufacture, by exorbitant usance, though they add to the capital employed in them, are not really the benefactors of the community. Mere increase of business, in an abstract sense, may be an evil as often as a good; just as extent of territory, on many occasions, enlarges the difficulties and expence of government, without securing the power or strength of the state.*

* Some of the principles above referred to are more fully stated and explained in a subsequent part of these pages. One of the objects of the Treatise being to discuss the arguments adduced against the Laws, some of the reasons on which they are founded are investigated, by way of reply to the objections of Mr. Bentham and other writers.

## SECT. VI.

### THE ARGUMENTS AGAINST THE LAWS CONSIDERED. —Mr. Bentham.

It has been said, that "the celebrated work of Mr. Jeremy Bentham, on this subject, is one of the most complete and satisfactory answers that ever proceeded from the head of man, and that it is the most perfect specimen of logical accuracy, in all its parts, that ever was written."

Mr. Bentham *alone* would be a formidable antagonist; and his opinions, thus supported by eminent authority, carry so much weight with them, that an unknown writer who ventures to dispute his premises, and contest his conclusions, will probably be censured for great presumption. Yet the question is one upon which the public opinion is much divided, and there is not only the evidence of practical men, but the authority of many learned writers, in opposition to Mr. Bentham. Thus countenanced, I am induced to hazard a reply to the celebrated "DEFENCE OF USURY."

Mr. Bentham says, that the "fixing the rate of Interest, being a coercive measure, and an exception to the general rule in favor of the enforcement of contracts, it lies upon the advocates of the measure to produce reasons for it."*

* Mr. Bentham, in the Index to his Treatise, has briefly

Nothing, certainly, can be clearer than the necessity of enforcing Contracts; but then *the Contracts must be legal*, and before we can be called back to examine the grounds of the law, a *prima facie* case must be established against its justice. Common necessity and convenience require such to be the mode of proceeding. Were it otherwise, nothing could be more easy than applications to change or abolish the jurisprudence of the land. Every troublesome caviller might present his petition to repeal laws which he disliked, and demand of others to shew their reason and utility. It is enough to say that the law exists. Its foundation was discussed when it passed, and its utility must be presumed until the contrary be shewn.

If it be *obsolete*, there is no harm done; it may prevent evil, and prevention is better than cure. If it be in actual operation and produce mischief, let its antagonists show in what that mischief consists.

We must not, however, expect that Mr. Bentham will be satisfied with a *legal* consideration of the question. He is a philosopher, and traces the *causes* and *reasons* as well as the existence of things. "No one rate of interest," says he, "is *naturally* more *proper* than another." *Natur-*

all accurately stated the substance of each argument. In adopting his own words, therefore, I am relieved from any apprehension of misquoting the scope of his reasoning.

*ally* perhaps not, because in a state of nature there would be no interest at all. The value of money is purely artificial or conventional,—inherently it is of no more value than wood or stone: but it is more durable and more scarce than either, and therefore serves well to represent value.

Take another step in the social progress of the world, and *we deny that one rate of interest is naturally as* PROPER *as another.* Even a savage, if we can suppose him to possess any sense of propriety whatever, must be conscious that to exact 5 or 50, cannot be equally "proper," under precisely the same circumstances. Suppose a barbarian to lend his neighbour a cow or a measure of corn, will he be impressed with precisely the same sentiment of rectitude or well-doing, if he exact a double return, or be content with a tythe? Even supposing that he has no moral sense, still it could be shewn to him that the general interest of his tribe consisted in requiring only a moderate usance, and that his comrades would be prejudiced by an excessive one,—that his conduct would be approved or condemned in proportion as he conformed to the general interest and refrained from injuring it; would he not then both feel and understand that "one rate of interest might naturally be "*more proper* than another."

"No idea of propriety, however, (says Mr. Bentham,) could have been formed on this head, but for custom." Undoubtedly the sense of propriety in every thing greatly depends on custom. But the custom may have its origin in the natural feelings of mankind. How did the custom originate? Some one must have first done that which was afterwards done by others, and which, by the extension and repetition of the act, became a custom. The sense of propriety, therefore, must, at first, have been natural. The consciences of men certainly vary, yet a moral faculty exists, and, though differing in degree, it is still the same in kind.

"The rate indicated by custom, (continues our author,) varies from age to age, and from place to place;" yet still the custom is founded upon the circumstances of the age and place. The rate is the same in Ireland and Jamaica, and differs from that of England. In India it varies still more. But the hazard keeps pace with the diversity of rate, and the common sense and feelings of mankind assent to the propriety of the difference. The custom is not of a random nature. It is regulated by the occasion, and justice proportions the rate to the circumstances of the case. It is this correct *proportion* which constitutes the moral foundation of every law: thus the punishment of death is justly inflicted for murder: but, when

awarded for a petty theft, all our natural feelings revolt against it.

"Custom, (says Mr. Bentham,) is generated by convenience, and we should submit to it throughout."—"It would be convenient to me, (he argues,) to give six per cent. for money: I wish to do so."—"No," says the Law, "you shan't."—"Why so?" says Mr. Bentham.—"Because it is not convenient to your neighbour to give above five for it."

This argument of *individual convenience* is rather dangerous; and, on the same principle, a swindler might say, "It would be convenient to me to cheat Mr. Bentham."—"No," says the Law.—"Why so?" says the swindler.—"Because, though Mr. Bentham be easily cheated, it is not good for the community that so valuable a member should be cheated."

But then, it may be said, the convenience referred to, means a *general* convenience. So I understand it, and it is precisely upon this principle that the Laws of Usury are justifiable. It would, no doubt, occasionally be convenient to some individuals to borrow money beyond the legal rate; but it could never be *generally convenient*, for the profits neither of agriculture nor commerce can afford the payment, and the market rate of interest proves the fact.

"There is no more reason (says Mr. Bentham,)

for fixing the price of the use of money, than the price of goods." I say there are very good reasons: the one is always of the same quality; the other varies indefinitely. The price of money *can* be fixed; the price of goods *cannot*. The dealers in goods are more numerous than the dealers in money: there is, therefore, more competition. The greater part of goods are, more or less, perishable. Money is not so. The trader is, therefore, more strongly impelled to bring forward his articles for the benefit of the general market, than the miser can possibly be.

The only analogy that could be fairly instituted would be, as it respects corn or some other essential commodity. If we could suppose the possibility of a few individuals holding all the sustenance of the country, and refusing to dispose of it, except at an inordinate rate which the people in general could not possibly pay, it would be the duty of the legislature to interpose its authority, and preserve the inhabitants from the horrors of famine. But such a case is impossible; reasoning upon it is idle, and the analogy fails.

## SECT. VII.

### The Arguments against the Laws further considered—Prevention of Prodigality.

" Interposing to prevent prodigality, (Mr. Bentham asserts,) is not *necessary* to the existence of society; though it may be of *use*, choosing proper methods."

On the same reasoning, laws to prevent fraud and theft are not necessary to the *existence* of society, though somewhat useful. The frauds and thefts are few: the acts of honesty and abstinence from plunder are by far the more numerous. Perhaps it may be said, without much appearance of paradox, that, if the law did not offer its protection against deceit and pilfering, we should individually be more cautious in our transactions, and arm ourselves more effectually than we do against the dexterity of the pickpocket and the violence of the robber! Let each man take care of himself. Law is unnecessary. Let him be the redressing Quixotte of his own wrongs and grievances!

" Borrowing at extraordinary rates," says our author, " is not a natural course for prodigals to take." " Those who have money of their own don't borrow." *There needs no ghost to tell us this!* " Those who have real or good secu-

rity to offer, get money at ordinary rate." That is to say, the profligate is a person of the best information and the greatest caution. He has the discretion to select an honest solicitor; and the solicitor selects an honest money-lender; and the security is examined; and the business done instantaneously,—to enable the prodigal to go to the gambling-table, or to the horse-race. All this is remarkably probable, and very consistent with fact!

Then, again, "he does not borrow if he possess any thing to sell, though it be but a contingency." If he could not borrow on the contingency, he would probably sell it; but the fact surely is, that they who want money only for a temporary purpose, borrow it if they can. They end in selling when the security will afford no further borrowing.

We are next told that "those who have no *sufficient* security to offer, are not more likely to get money at an extraordinary, than at an ordinary, rate."

This point entirely depends upon the *sufficiency* of the security. A freehold estate will always pay a certain rental; and, supposing the rental *sufficient*, the tenure of the property is clearly so. But the property may be leasehold, and of short duration. Here, then, the rate of interest would be different; because, at a certain

period, the security will cease. The property, also, may depend on the life of the party, or on his prosperity; and who is to estimate all these degrees of sufficiency?

"What they do get," it is said, "they get at the ordinary rate of their friends." But it will often happen,—perhaps, more often than otherwise,—that the friends of the prodigals are not rich; nor are they always inclined to give up their money: so that the spendthrift must frequently be driven to his enemies, or those, at least, who are not his friends; and Mr. Bentham would leave him at their mercy!

"Preventing their getting what they want at a high rate, in the way of borrowing, prevents not their getting it in the way of taking up goods on credit." It is true, that it does not: but then we have another law, which reaches the case supposed. *Obtaining goods on false pretences* is punished even still more severely than usury. So that, so far as relates to *the borrower*, the law is not silent in restraining the one practice, as well as the other: and, as respects *the lender*, if, in order to provide for his supposed risk beyond the legal rate, he charges exorbitantly for his goods, the contract is vitiated:—there is, therefore, no inconsistency or discrepancy (which the objection supposes,) in the existing code.

## SECT. VIII.

### The Arguments against the Laws further considered—Protection of Indigence.

"The advantage it may be of to a man to borrow money, and the need he may have of it, admitting of an undetermined number of degrees, so may the consideration he pays for it."

"No legislator can judge, so well as each individual for himself, whether money is worth to him any thing, and how much, beyond the ordinary interest."

These positions of Mr. Bentham are no doubt true in some, and perhaps in many, instances; but the question is not an *individual*, but a *general*, question. The degrees of want in different men may be various; and several individuals may be disposed, at great sacrifice, to borrow money; and others, tempted by the prospect of great gain, and by alluring, and perhaps deceitful, representations, may be disposed to lend it. But what is the *public* interest and the general good? Both the borrower and the lender have many persons who are more or less dependent upon their good fortune. The lender, even, may possibly have creditors. It is not every one

that pays ready money. He has the means of obtaining credit, and may avail himself of them. He may also have a family, who will be injured by his losses, just as they are benefited by his prudence. The borrower, also, in his degree, holds a relative situation in society. He has obtained the money, and trades with it: he pays in part, and on the faith of his apparent affluence he obtains credit. Thus, by a single act, now denominated as illegal, a hundred persons, if the speculation be untoward, may be seriously injured. Undoubtedly, if commerce could not exist without such speculations, the evil must be endured for the greater good. But the probability is, that the present restraints induce the *real*, and not the *fictitious*, capitalist to embark in trade. The number of traders, therefore, is not reduced by the Usury Laws. The industrious are, in truth, increased, because the idle are diminished.

## SECT. IX.

### The Arguments against the Laws further considered—Repression of Projectors.

About one-third of Mr. Bentham's Treatise is devoted to a disquisition on the opinion expressed by Dr. Adam Smith, in favour of the law fixing the rate of interest, on account of its tendency to repress projectors.

The general argument in favour of the law does not principally depend on this point. It may be that this reason is the weakest of them all, especially if, by "*projectors*," Dr. Smith intended (as Mr. Bentham assumes,) "the authors and improvers of all the arts to which the world owes its prosperity:" but, I apprehend, no such signification was really intended, and cannot be fairly inferred from the whole context. The particular instances to which Dr. Smith referred were, no doubt, those which form the far greater number of projects. In the passage quoted by Mr. Bentham, prodigals and *projectors* are spoken of *generally*. What then, it may be asked, is the description of the *largest class* of projectors? Certainly not of the ingenious inventors and discoverers in art and science. They form but a small number, when

compared with the bulk of trading and other *adventurers*, who are ambitious to leave the humble path of secure but subordinate industry, and to advance themselves into more envied and conspicuous stations of life. These are the persons who are the most numerous applicants for borrowed capital,—who have little to lose, and every thing to gain,—and who are willing to submit to any terms on which they can obtain money to commence their career.

Now, the evil of permitting capital to be lent on exorbitant interest to such persons, is very glaring. The ready money gains them credit; they get largely in debt; they resort to various expedients for temporary supply; make great sacrifices to force a trade; and the majority of insolvencies and bankruptcies which take place are amongst this class of persons.

The lender of the original capital takes the best security he can. The borrower feels it his interest, expecting further accommodation, to disclose his affairs, and the lender sweeps away whatever remains to satisfy his claim; the other creditors receive nothing. Such is often the case, under all the restraints that at present exist: remove those restraints, and the evil will increase.

The justice of the law, as it now stands, is this: The lender cannot receive more than five

per cent., but for this he has the best security in the borrower's power; the other creditors have no security, but they have a larger profit on their goods than the other has on his money. If he desire a greater profit than five per cent. let him fairly embark his capital as a partner; and, as he claims the profit, let him also incur the risk of loss. According to the proposed system, he is to escape responsibility, whilst he reaps advantage; and the idle man is thus, in case of the borrower's failure, the only person who escapes its consequences.

"The law, it is said, admits of no discrimination in favour of the innocent and meritorious projector." Undoubtedly, all public regulations must necessarily be general, and cannot provide for every peculiar case. But there are various private encouragements held out to the *meritorious*, by the munificence of individuals, as well as by that numerous class of persons in this country, who are willing to believe a great deal more than is true of any project. One should like to hear, indeed, of some authenticated instances, if they exist, in which an important or useful invention, or improvement, has been either prevented altogether, or for a time impeded, by a want of the means of making the experiment.

And, supposing that a few such instances could be pointed out, still it is too much to ex-

pect that all the Usury Laws should be abolished, and the evil they prevent let loose on society, for the sake of giving a possible chance to the earlier maturity of some speculative scheme, which, if it be really important, will, in no long time, find its way to public notice. Rewards are ever ready to be bestowed on meritorious discoveries, proportioned to their magnitude; and the Government is not in the habit of refusing remuneration to those who perform great public services.

With respect, also, to projects of great extent and importance, the best mode of advancing them has long been found to be to invite the public to take shares in the undertaking; and, by the moderate subscriptions of each individual, sums of the most extraordinary magnitude have frequently been raised. The history of the projects which have failed, as well as those which, in various degrees, have succeeded, sufficiently shows that there is no real want of capital to encourage any species of project in this country. Of all other arguments, indeed, that is the most unfounded which depends upon any public necessity to increase the opportunities and means of gulling the credulity and good nature of "honest John Bull."

## SECT. X.

### The Arguments against the Laws further considered—
### —Protection of Simplicity.

"No simplicity, short of idiotism, can render an individual so bad a judge in this case as the legislator."*

The legislator is, of course, ignorant of the peculiar circumstances of *each* individual; but he is, or may be, well informed regarding the condition of individuals in general; and though, consequently, he cannot frame a rule which will apply to every case, he may provide for the majority. The question is one of general policy; and the impartial statesman is more likely to be acquainted with that which is of importance to the community at large, than any interested individuals. This argument, like one already noticed, proceeds too far: if each person is to be the judge of the justice and utility of his own contracts, it is easy to perceive that the community will suffer.

Our author continues: "It would be to no purpose to prevent a man from being imposed upon in this way, unless he was prevented from being imposed upon in purchases and sales. A

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* Mr. Bentham.

man is not so liable to imposition in this way as in those; and, in this way, imprudence admits of a remedy, which it does not in those others: viz. borrowing at a lower rate, to pay off the first loan."

The essential difference between money and articles of purchase and sale, have been already referred to.* The prices of merchandize, owing to the variety of their cost and quality, as well as their scarcity and necessity, may not be the proper subject of parliamentary regulation; but it is not a little singular to assert, that, because imposition may be practised, and cannot conveniently be prevented, in the one case, we should therefore permit it in others, where we have the power to restrain it. Besides, there *is* a check upon imposition in the price of these commodities. It is only when the purchaser fixes the price himself, that he is bound to pay it. If the goods be bought without the rate being mentioned, the seller can practise no imposition; for the buyer is only liable to pay the general and reasonable, or market, price. The law, therefore, enables every person to avoid imposition, if he choose to avail himself of his right; and the charge of inconsistency is, therefore, unfounded. It may be observed, also, that the

* Sect. iv., *ante*.

cases of imposition in the purchase of merchandize are generally of small amount, and of inconsiderable importance, compared with the extent of money transactions.

The remedy of the imprudence, by borrowing at a lower rate to pay off the loan, like some other remedies, would often be worse than the disease. If the original sum were not of great amount, the expences of the exchange would exceed its advantage; and the greater number of these transactions, under the proposed repeal, would no doubt, individually, be of inconsiderable extent. The lender, also, might easily prevent any remedy, in the way suggested, by extorting a bonus out of his own money, instead of accepting a contract for an annual interest; and this consideration will show that the assertion of a man's not being so liable to imposition in borrowing money as in purchasing property, is entirely a mistake.

## SECT. XI.

### The Arguments against the Laws further considered—Supposed Mischiefs of the Anti-usurious Laws.

"There are various ways," says Mr. Bentham, "in which the laws against usury may do mischief: 1, by precluding many from assistance altogether; 2, forcing men upon more disadvantageous ways of obtaining it; 3, or upon more disadvantageous terms, in the very way forbidden."

It is very questionable whether there are *many* persons precluded from assistance altogether by the present laws. I believe there are very few who are so precluded; and, at best, it is only a point of comparison between the number of those who are now precluded, and those who, it is supposed, would be relieved if the law were altered. And, admitting that the repeal would afford to some individuals partial relief, we must still be called back to the question of *the general interest of society.* Though some might be relieved,—though the wants of a few borrowers might, for the moment, be satisfied,—would not that relief be purchased at the expence of other members of the community? The evil would only be changed, not removed; and

it might probably be removed from the shoulders of the undeserving to those of the meritorious. The class of persons who are contemplated in this objection, are those who have no sufficient security to offer, or property to charge or dispose of, for the raising of money. Why should they expect money to be *lent* to them on any terms? Let them work, and then it will be *paid* to them. There is a great deal of idle speculation at the bottom of all these schemes of borrowing, which it is to the interest of society, to a certain extent, to repress.

The difficulties of borrowing, it is said, are increased, and some few persons are forced upon disadvantageous ways of obtaining money. "During the war, the restriction to five per cent. was a great detriment to raising of money." All this assumes that borrowing should be encouraged, and that the more extensive it becomes, the better; instead of being considered, as it is, an evil, though sometimes it may be palliated by peculiar circumstances. When men cannot borrow, it is said, they sell, and sell disadvantageously. This is a supposition founded in mistake: many men will often run in debt, by borrowing if they can, who will not sell their patrimony; so that the difficulty of borrowing, in such cases, impels them to habits of economy.

Another supposed mischief of the anti-usu-

rious Laws, is alleged to be the exposing "an useful class of men to unmerited suffering and disgrace."

This position is full of assumptions. It assumes the usurer to be useful; that he is a sufferer, and his disgrace unmerited. All these things are very questionable, if not unfounded. The whole preceding considerations show that the exactor of usury is not generally useful to the community. His *sufferings* are of his own seeking, and his disgrace the consequence of his own conduct. If there be suffering and disgrace, it is therefore not unmerited; but the quantity of this supposed suffering is very inconsiderable. The violation of the law is not an act of sudden passion; it is the result of cool and deliberate decision; and those who practise it feel no remorse, and, when detected, perhaps little shame. Their suffering arises from their occasional want of success;—a suffering to which all men, whether of merit or demerit, are liable. It is true, they are sometimes injured in their interests; their dear "ducats" are lost; yet it is but a deduction from their profits, and the very argument in favour of usury supposes it to be a gainful trade. The *disgrace* of the traffic, if it exist to any great extent, would not be encountered, if it did not bear with it the sweets of compensation.

Again, it is urged, that the laws "encourage and protect treachery and ingratitude."

Those who deal with necessitous men, and often take advantage of necessity, should expect that sometimes advantage will be taken of themselves in return. If they lend money upon the condition of receiving a high rate of interest, provided the profits should be great,—that is, if their loan of capital is to yield a certain proportion of the gains produced by its employment,—the transaction is legal. Here there can be no treachery or ingratitude. This is in the nature of a limited partnership. The one party supplies capital, and the other skill and labour; and the risk is fairly and equally run. But, when the lender insists upon "his bond," although the "argosy be cast away, coming from Tripolis," is it very wonderful that the borrower should avail himself of the protection of the law?

## SECT. XII.

### The Arguments against the Laws further considered—Virtual Usury allowed.

Several cases are stated by Mr. Bentham, "where interest above the ordinary rate has been taken, by *evasion* of the law, in drawing and re-drawing, and selling, of bills of exchange."

These evasions, however, are only casual, and not more frequent, as respects this law, than any other. Unless the evasions were as numerous as the contrary, so as to render the law generally inoperative, they cannot form an argument against it; and the instances mentioned prove only that the evil, against which the law provides, has been too quietly submitted to; for no lawyer will maintain the legality of drawing and re-drawing bills so frequently, that, at ten shillings' commission, the merchant may obtain £13 or £14 per cent. per annum. It is true, the law would depend on the question of fact, and a jury must decide it; but no twelve men could doubt of the intention of the parties in such a transaction. With respect to *selling bills at under price*, very few, I believe, have ventured upon the practice; and there is

an obvious mode of resisting the practice, (independently of the Usury Laws,) namely, by compelling the holder to prove the consideration; and he would then only recover the actual money he had advanced.

There are cases, also, says our indefatigable objector, where interest above the ordinary rate is taken, by allowance of the law,—as in *pawnbroking*, *bottomry*, and *respondentia*.

Now, as to the policy of pawnbroking, in the extent to which it is carried, it is not here the place to inquire. If it be impolitic in any part of it, let a remedy be applied. The extension of interest is allowed on account of the extent of the risk: the property pledged may have been stolen, and then the pawnbroker loses his security. He must also insure it from fire, and pay the expence of its preservation. There may be other reasons in favour of the pawnbrokers, but these are the principal ones. But whether that particular law be well or ill founded, is not the question. Human legislation is imperfect; but let us not, therefore, reject it altogether.

Bottomry and respondentia are a species of maritime pawnbroking. Mr. Bentham does not object to them, but demands "what there is in the class of men, embarked in this trade, that should render beneficial to them a liberty, which would be ruinous to every body else. Is it that

sea-adventures have *less hazard* on them than land-adventures? or that the sea teaches those who have to deal with it, a degree of forecast and reflection which has been denied to landmen?"

It is because sea-adventures are *more* hazardous than land-adventures, that a different rate of interest prevails. The capital of the lender is in greater jeopardy than in other cases, and common justice awards him a larger remuneration: but another reason is, that, if the adventure succeed at all, it is more profitable, in general, than internal traffic, and can, consequently, afford to pay a higher rate. Besides, in one class of these cases, the money is only to be paid upon the *success* of the undertaking,—namely, the arrival of the vessel; and therefore it is, in effect, a partnership in the speculation.

The law, it is observed, is also evaded indirectly, in the form of *annuity transactions*, which are conducted at the expence of the borrower. It is said, that, were the rate of interest unrestrained, money would be lent on mortgage instead of annuity.* The heavy commission and

* Some of these positions are not advanced in Mr. Bentham's celebrated work, but they have been adverted to by other political economists, and may be conveniently noticed under the same general head.

law charges come in, along with the usance, for a share of the odium. The expences, however, do not vary in any great degree, whether the money be raised on mortgage or annuity. *In both cases, the title must be investigated, and the property valued.* The difference in *stamps* is certainly considerable, and especially where the sum to be raised is of large amount; but the law charges ought not to affect the general argument.

Besides, it should be recollected, that a great part of the annuities are chargeable only on *life* estates; and these, of course, cannot be the subject of mortgage. Leasehold property, unless held for a long term, is also ineligible as a mortgage security.

Some of the annuities which are now granted are, undoubtedly, in direct opposition to the spirit of the law against usury; since not only is interest beyond five per cent. charged, but also the insurance, which enables the lender to receive back his principal. Yet, if five per cent. be allowed on mortgage, where the money in a short period may be called in, a higher rate should, in common justice, be granted, where the re-payment depends entirely on *the option of the borrower*; and, on annuities for lives, where *the principal is absolutely sunk*, the rate of interest may properly be still further extended.

The justice of all these contracts depends on the circumstances above referred to, compared with the ordinary rate of interest, and the nature of the security. It is, therefore, of essential importance that there should be a common standard of interest where the money is to be returned, and the pledge for its return, is really sufficient. If there be no such standard, rapacity has no check; and, to eulogize the facilities to borrow, where ruin is the probable consequence, either to one party or the other, is perfectly monstrous.

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## SECT. XIII.

### Further Arguments against the Laws considered—*Sir William David Evans.*

In a note to the "Collection of the Statutes," by Sir W. D. Evans, it is remarked by the learned author, "that the true question, considered in its general effects, is not between the obtaining the benefit of assistance gratuitously, or upon more favourable terms, and the obtaining it for a particular equivalent; but between the obtaining it upon such equivalent as the lender may deem more advantageous than a different application of his property, and

the suffering the loss and inconvenience which may arise from its being totally withheld."

In other words,—what will induce the possessor to part from his money, at the risk of losing it, instead of employing it in some other way?

First, let it be observed, there is always some risk of its being lost, in whatever way it be kept or used. There is no absolute safety, do what he may with it, so long as it continues in the shape of money. According to the present law, the lender possesses the utmost freedom of choice as to the securities on which to invest it. If he wish for considerable profit, and has no objection to a little exertion, he may embark in trade, and thus add at once to the capital and productive labour of the country. If he prefer a state of indolence, and yet desire great profit, he may risk his capital, as a *dormant partner*, with some person of activity: the law imposes no obstacle in the way. But, if he desire to limit his risk to a specific sum, and to *do no manner of work*, whilst he reaps the fruit of some other person's labour, he must be content, as he lives in idleness, to live in moderation. These different modes of "application of his property" are placed before him; and experience shows that there are abundance of persons to embrace each mode of applying their money.

There is no hardship towards the holders of money in the existing regulations; they have various modes of increasing their wealth, or adding to their income, and may select whichever suits their peculiar inclination. The effect of the law is to restrain the profligate, and impose frugality,—to check the heedless adventurer, and encourage industrious undertakings.

Lord Redesdale clearly states,* in his decisions when Lord Chancellor of Ireland, "that the true reason on which the legislature has said that, in bargains for money, no more than a fixed sum shall be taken, by way of interest, for the loan, is founded on great principles of public policy. It is more advantageous to the public, that persons, who are in possession of money, should use their *own* industry in the employment of their money, than that they should sit idle, and take the benefit of it through the industry of *others*; and therefore the loan of money, at any large rate of interest, has always been discouraged." "If every man could obtain, for the loan of his money, as high a rate of interest without hazard, as they do who employ it in trade or manufactures, which are hazardous undertakings, the most industrious of the people would be ground down by the usurers;

* 1 Sch. and L. 182.

they would get the profits of the trade, and the enterprising and industrious trader would be ruined."

Sir W. D. Evans remarks upon this authority, that "it is taken for granted that there is a certain quantity of money, which must necessarily be lent out at interest, and which the borrowers would certainly obtain at a lower interest, if the lenders were restricted from advancing it at a higher."

It cannot, perhaps, be absolutely said, that the money must *necessarily* be lent; but we know the fact to be, that abundance of money is lent, and, therefore, we may presume that the present inducement to lend is sufficient. There is an adequate number of the holders of money to prefer a moderate interest, on good security, to embarking in trade, at great hazard, for expected profit, however enormous; and, from the different character of men's minds, this will always take place. The cautious and moderate man lends money at legal interest: the enterprising and profuse incur all hazards to obtain a larger income. Society is benefited by both classes. If there were too many of the former, we should scarcely have emerged from commercial insignificance; and, were there too many of the latter, all would be uncertainty and fluctuation, followed by frequent distress, and some-

times by total ruin. Such is the case with the individuals themselves; and such would naturally be the fate of a nation of such individuals.

It is further observed by Sir W. D. Evans, that it is also "taken for granted that persons, exercising their own judgment, would be ground down and oppressed by contracts, *which they voluntarily enter into with their eyes open*, for the accommodation of money, to which they have no more claim than to any other property of the person advancing it."

It is by no means true that the borrower has always "his eyes open." He is in great distress, and is obliged to submit to the terms imposed upon him. He *hopes* to escape from his difficulties. He does not recollect that the *majority* of persons, who borrow at enormous interest, are at last ruined; or he fondly trusts that he will be one of the *few* fortunate exceptions. The monied man is, or might be, able to see all this; but, if he can obtain ten, fifteen, or twenty, per cent. for a temporary loan, he trusts to his superior vigilance to obtain back his principal. Perhaps, the truth is, on these occasions, that neither party have "their eyes *properly* open;" for, whilst despair and hope alternately blind the one, excessive cupidity deludes the other. But with each peculiar case we cannot reason;—the law is general, not partial; and

(as Lord Redesdale has stated,) it considers transactions of this nature, "not with a view to the individual, but on *public grounds*, in order to render the lending of money *generally* beneficial, by facilitating the means of procuring it on *reasonable* terms."

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## SECT. XIV.

### Review of the Authorities in favour of the Laws—*Grotius*.

We have already referred to the authority of the Jewish laws against the taking of usance, and its foundation in the principles of general utility. It was, in fact, a precept of *political benevolence*; but it must be allowed, that the total restriction against the taking of interest for the loan of money is not adapted to large communities. As society expands, its ties become attenuated. It is fortunate that *private* benevolence is so well preserved, and that the members of society do not become too much individualized. We ought not to expect any great share of *public* benevolence; and, perhaps, England possesses this rare quality in a higher degree

than any other commercial country. Still even Englishmen will not lend their money without some expected advantage; and therefore it is fit that an inducement should be permitted.

It is remarkable that none of the eminent writers on the principles of morality and the law of nations should, in any respect, question the justice or policy of restraining, within certain prescribed bounds, the rate of interest. It cannot be supposed that the point did not occur to their minds, or was not sufficiently brought before them. On the contrary, they discuss the very principles and foundation of the law. They are unanimous in giving up the injunction of the Sacred Law; and admit that, in the different and altered state of the society in which we live, compared with the Jewish institutions and character, it is not binding upon us. But they are all equally agreed in the propriety and necessity of confining the usance to a *moderate* rate.

Grotius,* after discussing the ancient doctrines respecting usury,—the nature of consumable and inconsumable property,—the natural barrenness of money,—the distinction between the use and profits of a thing, from the thing

* "Law of Nature and of Nations;" Book ii. chap. xii. sect. 21.

itself,—and the reasonings of *Cato*, *Cicero*, and *Plutarch*,—proceeds to contend that "those human laws, which allow a compensation to be made for the use of money, or any other thing, are neither repugnant to natural nor revealed law. Thus, in Holland, where the rate of interest upon common loans was eight per cent., there was no injustice in requiring twelve per cent. of merchants; because the hazard was greater. *The justice and reasonableness, indeed, of all these regulations must be measured by the hazard or inconvenience of lending; for, where the recompence exceeds this, it becomes an act of extortion or oppression.*"

It is obvious that the degree of the *inconvenience* of lending must be measured by the amount of the profit, or advantage, which might be obtained by a *different* application of the money, compared with the rate of interest. Now, if, in the general and ordinary routine of commerce and agriculture, no more than eight or ten per cent. can be obtained, surely five per cent. is a sufficient *recompence* for sustaining the inconvenience, or foregoing the advantage; because the higher profit could not be reaped without many hazards, which do not generally belong to the loan of money. In the one case, there is *at first* the risk of mistake in the selection of the articles of trade, (independently of all

its necessary expences;) and *next* the still greater risk of giving credit to those who do not discharge their engagements. In the other, the lender at a moderate rate has his own choice of investment, and need give no credit without ample security. He ought, therefore, as he encounters less hazard, to be satisfied with a proportionate diminution of reward. It is difficult to reach the *understandings*—or, perhaps, the sense of *justice*,—of those who do not admit the plain truth and reason of these considerations. We can but appeal to the common feelings and faculties of the human race on any occasion. If, in the present age, the majority be determined to run into the extreme of *licentiousness*, as, at a former time, they promoted, or encouraged, the extreme of *restraint*, it is to be lamented; and, when the evil is perceived, IF IT BE NOT TOO LATE, they will, perhaps, retrace their steps.

## SECT. XV.

Continuation of the Review of the Authorities—*Puffendorf.*

The subject is very fully discussed by Baron PUFFENDORF, who not only investigates the peculiar law against usury, according to the divine dispensation; but examines the arguments brought against it from the general laws of nature. He says, that "most people are not of the *Persians'* opinion, who, among their sins, give the *second* place to lying, but the *first* to borrowing; because it often happens that they that borrow, *lie*. Though *Herodotus*, in Clio, in my opinion, better assigns the first to lying, the next to borrowing." After presenting a curious disquisition of usury in all its forms and devices, and showing the subtlety with which usurious contracts have been attempted to be cloaked in all ages, he adverts to the philanthropic endeavours of *Moses* to benefit his countrymen, by the exercise of charity and liberality, which he establishes by several laws.

He then proceeds to point out that money is now borrowed for other ends than those provided for in the legislation of the Pentateuch; that it is borrowed in order to increase and im-

prove wealth. "When a man borrows for this purpose, why should another lend for nothing? Nay, 'tis an unreasonable thing, when you vastly improve your fortune with my money, not to admit me into *some* share* of the gain; for I, in the mean time, am debarred from making that advantage which I might otherwise have expected, by applying it to my own use. Besides, I have parted with something valuable, which ought therefore to be considered; for, in lieu of my money, I have only an action against your person, which cannot be prosecuted without some trouble."

Some other considerations are then presented relative to the expediency of allowing *none but merchants to take up money at use;* "for this would make the poor industrious, and force them to frugality, who, some of them, are not afraid to pay interest for money to maintain their extravagancies; and monied men, rather than let their money lie dead, would either take to merchandize themselves, or would put out their money to those that do; which would make trade flou-

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* In a note to the text above quoted, it is observed, amongst the conditions which are necessary to make interest lawful, "*that the interest is not greater than the advantage which the debtor hopes to gain by it;*" and "*that he does not go beyond the bounds fixed by the laws.*"

rish, to the great benefit of the commonwealth."* —There is great nicety of discrimination, and much ingenuity both of sense and learning, in these *legal classics*, although the language is not quite "germain" to the year 1824. In an age like the present, pluming itself upon literary and scientific eminence, it would be monstrous to change a system of jurisprudence, which has existed in this country from its very foundation, as well as in every other civilised state from the most remote antiquity, until we have investigated the subject in every possible bearing. A blunder in the sciences of legislation and political economy, upon so vital and momentous a question as this, would place for ever the stamp of ridicule upon the brow of this "*enlightened age*," and "the finger of scorn" might, to all posterity, be directed against the pseudo-philosophers of the day! It is, undoubtedly, a merit to march in advance of the political schemes by which we are surrounded, provided we can do so safely and correctly; but it is better to remain stationary than to do mischief; and it would be, by far, a less degree of degradation to follow the footsteps of Truth slowly, as we discovered them, than hastily to press forward, and mistake our path. But this does not suit the ambitious purposes of the times. Moderation

* Book v. chap. 7, sect. 9.

is out of fashion; and, because restrictions have been unwisely imposed upon particular parts of the commercial system, the public seem disposed, or our worthy, but mistaken, speculators represent them to be disposed, to annihilate *all* restriction: yet Puffendorf, with all his zeal for commerce, and all his inclination to favour the free progress of capital, still maintains the necessity of a restraint upon usury. "It is requisite," says he, "that private men should be *hindered by law* from exacting what interest they please, and that it should be *fixed at a certain rate.*"*

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## SECT. XVI.

### Continuation of the Review of the Authorities—*Vattel.*

I do not find that M. de Vattel has any-where expressly written upon the subject of usury; but he very distinctly condemns the principle on which the defenders of unlimited usury must rest their argument. It is maintained that, as there exists no law to restrain the price of merchandize, neither should the price of money be restrained; and that, as extortion is permitted

* Book v. chap. 7, sect. 12.

in the one case, it should be permitted in the other. But, though we have no municipal law upon the rates of merchandize, and it would be impossible to execute such a law, (a reason that does not exist in the case of money,) there is, as laid down by Vattel, a law applicable to nations, which forbids *immoderate gain* as an offence, and authorizes those nations which are injured by the monopoly of the necessaries of life, to join in bringing the avaricious oppressor to reasonable terms.

The passage is as follows:—"Thus, if a nation alone produce certain things, another may lawfully procure itself, by treaty, the advantage of being the only buyer; and then sell them again all over the world. And it is indifferent to nations from what hand they receive the commodities they want, provided the price be *reasonably* equal, and the monopoly of this nation does not clash with the general duties of humanity, unless it avails itself of this advantage, for setting an *exorbitant price* on its goods. Should it *abuse* its monopoly to an *immoderate gain*, this would be an offence against the law of nature, as, by such an exaction, it deprives other nations of a necessary or agreeable product, which nature designed for all men."

"Did the question relate to commodities necessary to life, and the monopolizer was for

raising them to an *excessive* price, other nations would be authorized, by the care of their own safety, and the advantage of human society, to join in *bringing an avaricious oppressor to reasonable terms.* The right to necessaries is very different from that to things adapted only to conveniency and delight, which, if they are too highly raised, we can safely go without. *It would be absurd that the subsistence and being of nations should depend on the caprice or avidity of one.**

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## SECT. XVII.

### Continuation of the Review of the Authorities—*Francis Bacon.*

The authority of LORD VERULAM is in favour of a *moderate restriction* of interest. After adverting, in his "Essay on Usury," to the invectives against it,† he says, that, "since there

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* "Law of Nations," Book ii. chap. ii. sec. 33.

† "Many," says he, "have made witty invectives against usury. They say, it is pity the devil should have God's part, which is the tythe;—that the usurer is the greatest sabbath-breaker, because his plough goeth every Sunday;—that the usurer is the drone that Virgil speaketh of:

must be borrowing and lending, and men are so hard of heart that they will not lend freely, usury must be permitted." He then enumerates the evils and benefits of usury, and proceeds to consider how the one may be avoided, and the other retained. "Two things," he says, "are to be reconciled: the one, that *the tooth of usury be grinded*, that it bite not too much; the other, that there be left open a means to invite monied men to lend the merchants, for the continuing and quickening of trade." He contends, therefore, for "two rates of usury, the one free and general to all, the other under licence only to certain persons, and in certain places of merchandizing."

It is remarkable that, so many years before it became the subject of legislative enactment, this enlightened philosopher was of opinion that five per cent. should be the legal interest in general; and that, for the encouragement of trade, a larger rate, under certain restrictions, should be permitted.

He does not enter into any discussion of the

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"Ignavum fucos pecus a præsepibus arcent;"

—that the usurer breaketh the first law that was made for mankind after the fall, which was, 'in sudore vultus tui comedes panem tuum;' not 'in sudore vultus alieni;'—that it is against nature for money to beget money, and the like."

nature of the securities to be given, but rests the case of the merchant upon his wants, and the importance of encouraging trade.

Amongst the "discommodities" of usury, the illustrious author mentions, *first*, "that it makes *fewer* merchants; for, were it not for this *lazy* trade of usury, money would not lie still, but it would, in great part, be employed upon merchandizing; which is the 'vena porta' of wealth in a state." *Second*, that it makes *poor* merchants; "for, as the farmer cannot husband his ground so well, if he sit at great rent, so the merchant cannot drive his trade so well, if he sit at great usury." *Third*, "the decay of customs of kings, or estates, which ebb or flow with merchandizing."* *Fourth*, "that it bringeth the treasure of a realm or state into a few hands; for, the usurer being at certainties, and the other at uncertainties, at the end of the game most of the money will be in the box; and ever *a state flourisheth when wealth is more equally spread.*" *Fifth*, "that it beats down the price of land; for the employment of money is chiefly either merchandizing or purchasing, and usury waylays both." *Sixth*, "that it doth dull and damp

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* This, I apprehend, is a reason of the same nature with the argument regarding the permanency of the value of property; page 8, *ante*.

all industries, improvements, and new inventions, wherein money would be stirring, if it were not for this slug." *Last*, "that it is the canker and ruin of many men's estates, which, in process of time, breeds a public poverty."

Such is the authority of Bacon, and such are the reasons which he adduces in support of his opinions; and yet Mr. Bentham says, "the world has no mouth of its own to plead by, and he must even find arguments for it at a venture, and ransack his own imagination for such phantoms as he can find to fight with." Lord Bacon was not a sufficient antagonist; his reasons were beneath the notice of his successor in legal philosophy!

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## SECT. XVIII.

**Review of the Authorities continued—*Mr. Justice Blackstone*—Reply to Mr. Bentham's Considerations.**

Sir WILLIAM BLACKSTONE is clearly opposed to an exorbitant interest being permitted by the law. "To demand," says he, "an exorbitant price is equally contrary to conscience, for the loan of a horse, or a loan of a sum of money; but a reasonable equivalent for the temporary incon-

venience which the owner may feel by the want of it, and for the hazard of losing it entirely, is not more immoral in the one case than it is in the other."

"The exorbitance or moderation of interest for money lent," he continues, "depends upon two circumstances: the inconvenience of parting with it for the present, and the hazard of losing it entirely. The inconvenience to individual lenders can never be estimated by laws; the rate, therefore, of general interest must depend upon the usual or general inconvenience."

Upon this principle, the laws should from time to time be varied, according to the scarcity or abundance of specie. But there will always be great difficulty in ascertaining the fact of its quantity. The price of the market, it will be said, should be the criterion; but on what does the fluctuations of the market depend? Perhaps on the speculations of a certain number of monopolists and wealthy and powerful individuals, or perhaps on the state of political affairs. So that the permanent welfare of the community is to bend to the projects of great capitalists, and the intrigues or ambition of courtiers and statesmen!

It is obvious that the learned Judge was, by no means, disposed to favour any thing that could not stand the test of reason; and he

refuted, with powerful arguments, the obsolete notions about the *mortal sin* of usury. Perhaps he carried his opposition to the opinions of the ancient writers to the extreme; but this fact must give added weight to his authority, by proving his severe and impartial judgment. Thus, in quoting the words of Aristotle, which are before mentioned, regarding the barrenness of money, the distinguished commentator observes, that "the same may, with *equal* force, be alleged of houses, which never breed houses, and twenty other things, which nobody doubts it is lawful to make profit of, by letting them to hire."

But houses and money, as we have already seen, are not analogous: the houses decay and wear out, and something should be allowed to rebuild them. Besides, labour is employed upon them, first in their construction, and then in their preservation. The increase of them is favourable to national industry, to convenience, and comfort. The increase of money, beyond a very limited extent, is of no advantage. The owner of the houses not only has done something towards building them, but he employs himself, in some degree, in attending to their repair; and is therefore entitled, on the principle of rewarding industry, to an adequate compensation.

This is an objection to our legal classic,

founded upon his passing a little beyond the medium line, and condemning, in rather too unmeasured terms, the eminent authority of Aristotle. But, whilst we think that Blackstone has gone quite far enough in his opposition to the great politician of Greece, Mr. Bentham entertains the idea that he has stopped short of the goal, and that the course of the monied man is not yet sufficiently clear, nor his race entirely won. The common image, which we have thus accidentally fallen upon, naturally leads to the remark of Mr. Bentham, that, "in Blackstone's opinion, the harm of making too hard a bargain stands on the same footing in the hire of a horse as of money; and" the disputant contends that, "if so, *consistency requires the subjecting of both businesses to the same restraints.*"

With submission to Mr. Bentham, he does not fairly apprehend the argument of the late learned Judge, and neither meets nor refutes it. The point is plainly this: If an ordinary horse, in the usual course of business, may be hired for half-a-guinea, it would be an extortion to charge a man twice or thrice that amount, who wanted it upon a pressing occasion of life or death, or who was totally ignorant of the customary rate of hiring. Every honest man would object to such an act, and consider it as improper and unjust. Now, the lending of a sum of money at

twice or thrice the established rate, under circumstances of distress or ignorance, is precisely analogous to the case of the horse, so far as moral justice is concerned; and yet consistency does not require that both cases should be subject to the same restraint, *because the value of the two articles are not alike, and not equally capable of appreciation.* There is no variety in the value of money. One bag of a hundred sovereigns is as good as another bag containing the same number; [it is not to be supposed that *bad* sovereigns are lent!] but all horses are not alike; they are different in price, from five pounds to as many hundreds, and the amount of hire may also vary in a considerable degree, though not in the same proportion; and the only reason for the variation is, that horses of extraordinary value are never lent at all.

Mr. Bentham has attempted to turn into ridicule this comparison of the loan of a sum of money to the loan of a horse, and has taken the trouble to furnish a PARODY upon the occasion. By a little transposition of language, and substituting the *selling of horses* for the *lending of money*, he endeavours to reduce the supposed parallel to an absurdity. The pains which he has taken, in the occupation of ten pages upon this topic, have scarcely been sufficiently rewarded; for, at the best, it is but a criticism on

a single illustration, and, if it were given up as unhappily chosen, the argument itself would remain the same. The ridicule, however, is really unfounded. "The value of horses," says Mr. Bentham, "differs not more than the value of money on different occasions." But this opinion has scarcely the slightest foundation in truth and accuracy: the value of horses is, of all other species of property, the most fluctuating, not only in peculiar instances, but in the general trade. The price varies with the season of the year; with the demand for particular kinds of horses, for agriculture, war, and other purposes; with the age and condition of the animal;—its size, strength, form, and perhaps even its colour. All these qualities relate to horses in general; and, when we come to hunters and racers, and those which are used for private riding, the value, or supposed value, depends so much on personal taste and opinion, that no general rate could possibly be fixed.

On the other hand, no such uncertainty accompanies the value of money. A guinea will last for centuries, without being sensibly diminished, and it is perfectly ludicrous to contrast its qualities of size, form, age, or colour, with those of a horse. But then, says our author, "The values of horses is not more different than the values which the use of the same sum of mo-

ney may be of to different persons, on different occasions." This is a statement not very consistent with another, which is made in the same letter,—namely, the instance of a famous racer which was sold for £2,000. The ordinary value of a horse is only twenty or thirty pounds; and it cannot, surely, be said that the value of money varies to so great an extent,—that is, from *one* pound to one *hundred* per cent!

With respect to Mr. Bentham's parody on a passage in the Commentaries, although such amusing vivacities might, for want of better matter, be tolerated in an election-speech, or an election-pamphlet, they are scarcely worthy of a treatise which professes to be philosophic, and has been pronounced, by a learned East-Indian Judge, already quoted, as "a very acute and masterly disquisition, and not the less profound and instructive for the lively and amusing manner in which it is conducted." It would not be difficult to run a similar parallel to some of the speculations of this ingenious author; but neither time, nor the fitness of the occasion, will permit it.

## SECT. XIX.

### Review of the Authorities continued—*Archdeacon Paley.*

Dr. PALEY, in discussing this subject, like all the preceding writers referred to, enters briefly into a refutation of the ancient doctrine against the receiving of interest, and then notices the general history of the law of usury. "The *policy* of these regulations," he observes, "is to check the power of accumulating wealth without industry; to give encouragement to trade, by enabling adventurers in it to borrow money at a moderate price; and, of late years, to enable the state to borrow the subject's money itself."

He states no objection to this policy, and it therefore may be fairly assumed that he assented to its justice, as well as its wisdom; and that, had he thought otherwise, it is obvious, from his previous strictures on the Mosaic law, and the general scope of his valuable writings, that he would freely have stated his dissent, and assigned his reasons, if he did not concur in the propriety of the modern law.

## SECT. XX.

Review of the Authorities continued—*Adam Smith.*

The authority of Dr. SMITH, on the reasonableness of the Usury Laws, has been already vindicated from the attacks of Mr. Bentham. It is said that Dr. Smith confessed himself to be mistaken, and Mr. Bentham to be correct. If this acknowledgment related to the identity of *projectors* with the authors and improvers of art and science, the admission was proper, and probably was made. It is not desirable to increase the difficulties of improvement. But the projectors intended by the author of the "Wealth of Nations," were evidently of a very different character from those great discoverers and inventors, who have immortalised their names, and benefited their country.

The following is the passage on which the strictures of Mr. Bentham have been made: (Book ii. chap. 4.)

"The legal rate, it is to be observed, though it ought to be somewhat above, ought not to be much above the lowest market rate. If the legal rate of interest in Great Britain, for example, was fixed so high as eight or ten per cent., the greater part of the money which was to be lent

would be lent to prodigals and projectors, who alone would be willing to give this high interest. Sober people, who will give for the use of money no more than a part of what they are likely to make by the use of it, would not venture into the competition. A great part of the capital of the country would thus be kept out of the hands which were most likely to make a profitable and advantageous use of it, and thrown into those which were most likely to waste and destroy it. Where the legal interest, on the contrary, is fixed but a very little above the lowest market-rate, sober people are universally preferred as borrowers, to profligates and projectors. The person who lends money gets nearly as much interest from the former as he dares to take from the latter, and his money is much safer in the hands of the one set of people than in those of the other. A great part of the capital of the country is thus thrown into the hands in which it is most likely to be employed with advantage."

In another part of the same work, (also in Book ii. chap. 4,) the author furnishes a clear and rational account of the data by which the rate of interest should be guided: He says, " In countries, where interest is permitted, the law, in order to prevent extortion of usury, generally fixes the highest rate which can be taken without incurring a penalty. This rate ought always

to be somewhat *above* the lowest market-price, or the price which is commonly paid for the use of money, by those who can give the most undoubted security. If this legal rate should be fixed *below* the lowest market-rate, the effects of this fixation must be nearly the same as those of a total prohibition of interest. The creditor will not lend his money for less than the use of it is worth, and the debtor must pay him for the risk which he runs, by accepting the full value of that use. If it be fixed precisely at the lowest market-price, it ruins, with honest people who respect the laws of their country, the credit of all those who cannot give the very best security, and oblige them to have recourse to exorbitant usurers. In a country such as Great Britain, where money is lent to government at three per cent., and to private people, on good security, at four and four and a half, *the present legal rate, five per cent. is, perhaps, as proper as any.*"

And, looking at the diminished profits of agriculture and trade since the time of Dr. Smith, and the consequent inability to pay a high rate of interest, the maximum ought rather to be reduced and limited to *four* per cent. than the restriction to five be removed.

## SECT. XXI.

### Summary and Conclusion.

Whether we consider the principles of this important subject, or view its past history and effects, or the circumstances which belong to it at the present time, we must equally, I think, arrive at the conclusion, that no alteration of the Laws is necessary, and that, to repeal them, would be productive of incalculable mischief. We have seen that the object of the enactments against usury is to benefit the community at large; to encourage productive labour, by the employment of capital at a reasonable rate; to check the tendency of a system that, if permitted, would absorb too much of the profits of industry, and afford increased temptation to idleness; to give, so far as human affairs will permit, stability to every kind of property, and to fix a general standard by which its value may be permanently ascertained. We have shewn, that a general system of borrowing is an evil; that its facility diminishes prudence, and "dulls the edge of husbandry;" that it is unwise to offer excessive temptations for the loan of money on deficient security; that the nature of money

differs from all other species of property, and may therefore, consistently, be the subject of regulations differing from those which prevail in other cases; that money is of no intrinsic or abstract value, but relative and conventional, and therefore comes justly within the scope of political enactment; that, unlike other commodities, it is imperishable in its nature, and immutable in quality and extent.

In considering the effects of the law on the trading community, it has been conceded that the repeal might benefit, and could not injure, the *first-rate* merchant, whose credit stands next to that of the government; but, on the other hand, it is clear that the *inferior classes* of trade and manufacture, which constitute the great bulk of the nation, would become the prey to every species of extortion; that, for them, there would be no general market-rate, because they have not the marketable security; and they would be thrown, therefore, in each instance, of necessity, upon the mercy of the money-lender.

Whilst such are the grounds and *principles* of the Law, we have perceived that the *facts* connected with its operation have proved its foundation in reason, and its beneficial effect upon society. The nation has increased in wealth from age to age; commerce and agriculture have advanced; and the Law has followed with equal

footsteps, and in no instance attempted to precede, the progress of these successive improvements. Of all other laws, it has been the least speculative: it has taken experience for its guide, and shaped its course by the gradual march of national prosperity. As the average profit of industry has diminished, the rate of interest for the use of capital has been reduced; and thus it has left to skill and labour their proportionate reward. In discussing the *objections* to the restrictive law, it was intended to meet fairly the arguments adduced: whether the reply has been successful or not, must be left to the judgment of the public.

The writer cannot conclude without addressing a caution to those who attempt the hazardous enterprise of disturbing a branch of our jurisprudence, which is intimately engrafted with all the transactions of society,—which has furnished the standard by which all wealth has hitherto been compared and estimated,—and by which all provisions for the future are calculated and arranged.

If, after all that has been adduced, the policy of the existing law should still be questioned,—if doubts still hang upon the mind,—let us pay respect to the authority of the distinguished writers, whose opinions have passed in review before us; let us not lightly reject the wisdom of

ages; and, though we bow not *implicitly* to the sages of old, nor to the larger experience of modern times, still we cannot dismiss a Grotius, a Puffendorf, and a Bacon, without due regard; nor disdain the writings of Blackstone, of Paley, and Smith. In a doubtful question, their weight must *turn the scale;* and in one, like the present, where reason, principle, fact, and experience, are on our side, their antagonists must speedily *kick the beam!*

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